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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.5624 of 2019 (O&M)
Date of Decision: 11.09.2019**

Tarun Jain

.....Petitioner

Vs

Rahul Thapar

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Naveen Upadhyay, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner against the order dated 29.10.2018 passed by Addl. Civil Judge (Sr. Divn.) Ludhiana vide which the defence of the petitioner was struck off and the application to review the said order was also dismissed vide order dated 20.02.2019.

[2]. Brief facts are that the a suit for possession by way of specific performance of the agreement to sell dated 08.01.2008 executed by the petitioner was filed by the plaintiff/respondent. An application was moved by the petitioner for producing original agreement to sell . The said application was disposed of on 24.04.2018. The case was fixed for filing of written statement for 09.05.2018, however none appeared on behalf of

the petitioner and the case was adjourned for filing written statement. On 18.05.2018 also, none appeared on behalf of the petitioner, therefore, the petitioner was proceeded against *ex parte*.

[3]. The petitioner filed an application for setting aside the *ex parte* order dated 18.05.2018. The application was allowed by the trial Court on 11.10.2018, subject to payment of costs of Rs. 1000/- and for filing written statement. However, on the next date of hearing i.e. 29.10.2018 neither the cost(s) was paid nor the written statement was filed by the petitioner. Therefore, the defence of the petitioner was struck off vide the impugned order.

[4]. An application was filed by the petitioner to review the order dated 29.10.2018. The said application was also dismissed by the trial Court on 20.02.2019. That is how the present revision petition came to be filed before this Court.

[5]. I have considered the submissions made by learned counsel for the petitioner.

[6]. Perusal of the impugned order dated 29.10.2018 would show that the case was fixed for 29.10.2018 for payment of cost(s) and filing of written statement, however on the said date none appeared on behalf of the petitioner. The petitioner submitted that he wrongly noted the date as 19.12.2018, but as per the impugned order dated 29.10.2018 the counsel for

petitioner appeared and his presence was also marked.

[7]. In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and Anr., 1982(1) R.C.R. (Rent) 1**, Full Bench of this Court held that in the event of non-payment of costs on the adjourned date, it is mandatory on the part of the Court to disallow prosecution of suit or defence as the case may be. Awarding of costs to the aggrieved party, though is the subject matter of discretion of the Court in terms of Section 35-B CPC, but once that discretion is exercised and the same is not complied with by the defaulting party, it shall become mandatory on the part of the Court to disallow further prosecution of the suit or the defence as the case may be. The aforesaid view was reiterated by the Delhi High Court in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007 (26) R.C.R. (Civil) 798 (Delhi)**.

[8]. In view of aforesaid legal position, no exception is made out in the present case. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

September 11, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No